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December 11, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Petition of Cox Virginia Telcom, Inc. for Arbitration of an Interconnection Agreement with Verizon Virginia Inc.
CC Docket No. 00-249

Dear Ms. Salas:

I am transmitting to you herewith the Reply Brief of Cox Virginia Telcom, Inc. in the above captioned proceeding. Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

J.G. Harrington
Counsel for Cox Virginia Telcom, Inc.

JGH/vll
Enclosure

cc: as per attached service list

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration	)))))))))	CC Docket No. 00-249

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY BRIEF OF COX VIRGINIA TELCOM, INC.

COX VIRGINIA TELCOM, INC.

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December 11, 2001

<u>**SUMMARY**</u>

Verizon's brief abandons many of the legal and factual arguments it made earlier in this proceeding, and relies on inapposite legal theories and unsupported factual claims. In particular, the Commission should not credit Verizon's claims that CLECs impose significant costs on Verizon and that Cox should be forced to adopt unreasonable contractual provisions because other carriers have agreed to them. The Commission should adopt Cox's position on each of the outstanding issues in this arbitration.

Issue I-1 (Points of Interconnection)

Verizon's theory that Cox should transport Verizon-originated traffic is contradicted by the Commission's rules and relevant case law. First, Verizon's claim that Cox's language would give Cox interconnection that is superior to that now available to Verizon misconstrues the *Iowa Utility Board* decisions and the Commission's rules. In addition, Verizon's analysis of Section 252(d)(2)(A) ignores key elements of that provision and is contrary to an existing Commission interpretation that has been upheld by the D.C. Circuit. Even the state decisions cited by Verizon do not support its position, and in at least two cases specifically rejected VGRIP.

The facts show that changing the current interconnection regime would be harmful. Verizon bears very few costs to transport CLEC calls, but VGRIP would significantly increase CLEC costs. This effect would be particularly significant to Cox because Norfolk is a single-tandem LATA and Cox would be required to collocate in each local calling area to avoid being charged transport by Verizon. Verizon's most current proposal creates additional issues because it does not contain the language necessary to identify where Cox can deliver its traffic to Verizon.

Distance-Sensitive Transport Charges (Issue I-2)

Verizon fails to establish either a legal or factual basis for its efforts to avoid paying distance-sensitive transport charges for the short route between Cox's switch and Verizon's nearest serving end office. Verizon's proposal would violate settled Commission policies concerning a CLEC's right to choose points of interconnection and concerning Cox's status as a co-carrier. There also is no factual basis for the Verizon proposal, because Cox's rates are reasonable and because Verizon could not be forced to use Cox's network for any excessive distances. Indeed, Verizon's hypothetical 87-mile transport link would not be possible under Cox's proposed language.

Physical Collocation at CLEC Premises (Issue I-3)

Verizon concedes that Cox is not required to grant physical collocation to Verizon, but does not recognize that the Communications Act and the Commission's rules forbid any arbitrator from ordering CLECs to permit ILECs to collocate. Verizon also presents no evidence to show that the interconnection options available to it, including mid-span meets, would not be sufficient to meet its needs.

Threshold for Direct Trunking (Issue I-4)

Verizon's proposed requirement that Cox establish direct trunks whenever traffic to an end office exceeds the level of a single DS-1 simply is an effort to force Cox to duplicate Verizon's inefficient network architecture. Verizon has made no effort to show that Cox's proposal, which would set the threshold at the level of three DS-1s, is technically infeasible and Verizon has provided no usable evidence that CLECs are causing the supposed "tandem exhaust" problem. Verizon's proposed language is impractical because it uses antiquated engineering standards and sets a hair trigger for the direct trunking requirement. Further, Verizon's legal theories concerning potential discrimination against other CLECs and violations of the "equal in quality" requirement are unsupported by the law or any evidence of record. Finally, Verizon has not addressed the many alternatives to this proposal, including reducing underutilization of existing trunks and employing more direct trunking for its own outbound traffic.

Verizon Outbound Forecasts (Issue I-7)

Verizon's forecasting proposal would shift the burden and costs of its own obligations as a common carrier onto Cox. The evidence fails to establish that Verizon cannot forecast its own outbound traffic, or that Cox could produce a forecast that would be any better than one Verizon could prepare. Forecasting Verizon's outbound traffic would be costly for Cox, and would be pointless because Verizon has reserved the right to ignore any forecast. Verizon's claim that other CLECs perform forecasts is irrelevant; for that matter, no other carrier ever has sought to require Cox to perform forecasts of that carrier's outbound traffic.

ISP-Bound Traffic (Issue I-5)

Verizon continues to argue that the *ISP-Bound Traffic Order* is self-implementing, but the statements of its own witness show otherwise. Indeed, Verizon's actions belie its statement that it is willing to work with Cox and other CLECs.

Verizon's specific objections to Cox's language are insubstantial. Cox's proposal would not improperly treat "Section 251(g) traffic" as local traffic, and Verizon has identified no traffic that would be classified incorrectly. In addition, Verizon's objections to Cox's change of law provision ignore the difficult history of compensation for ISP-bound traffic and Verizon's own behavior in response to the *ISP-Bound Traffic Order.* Consequently, Cox's language should be adopted.

Methods for Rating Calls (Issue I-6)

Verizon's arguments for its "virtual FX" proposal are an exercise in semantics. The record shows that CLEC foreign exchange offerings and call rating for CLEC FX customers are consistent with industry practices, including Verizon's treatment of its own FX customers and FX traffic. In addition, Verizon neither loses any revenues nor incurs any meaningful additional costs as a result of CLEC FX offerings, while Verizon's proposal would force CLECs to abandon their customers or incur significant costs to build utterly unnecessary facilities. There also is no practical way to implement Verizon's proposal. Verizon's witness conceded there are no "viable methods" to determine "actual origination and termination points." Contrary to Verizon's claim, it has proposed no way to make those determinations, and statements that its witness was "vaguely aware" of possible mechanisms are not a proposal. In any event, Verizon has ample state remedies for any actual abuse of NXX codes by CLECs.

CPNI (Issue I-8)

Verizon has abandoned its earlier arguments in support of its proposal to monitor Cox's use of CPNI, and now depends entirely on the theory that it must protect its OSS. Verizon has provided no evidence that monitoring Cox's use of CPNI is necessary to protect OSS, especially given that Verizon has claimed it needs to monitor volume of OSS use, something that does not require review of customer CPNI. Moreover, the specific language proposed by Verizon would allow it to monitor both the volume and content of Cox's use of CPNI, which would have significant anticompetitive effects.

Rate Caps (Issue I-9)

Verizon's proposal to cap Cox's rates is unnecessary and unlawful. Market mechanisms prevent Cox from charging more than just and reasonable rates. The Commission knows that these mechanisms have succeeded because Verizon concedes that Cox's rates are reasonable. Verizon also has legal remedies available to it, including complaints to the Commission or the Virginia Commission. Finally, Verizon's proposal unreasonably prevents Cox from charging the rates Cox deems appropriate. Even as modified by Verizon's November JDPL, the Verizon language effectively would bar Cox from charging any rate higher than Verizon's, even if such a rate were cost-justified.

OSS Termination (Issue I-11)

Verizon spends most of its effort supporting the proposition that it should be allowed to monitor the volume of CLEC OSS use, but Cox does not object to such monitoring. Rather, Cox objects to a provision that would give Verizon new, unilateral rights to terminate Cox's access to OSS. The limited history of OSS abuse, coupled with the remedies Verizon already has, make it evident that there is no need to grant Verizon this powerful new competitive lever. Verizon does not explain why it needs new remedies when it already can suspend access to OSS and when the material breach language in the Cox agreement would be triggered by the same abuses that would trigger the OSS termination provision. Finally, Verizon's new theory that it cannot adopt language for Cox that is less restrictive than the language for other carriers is incorrect as a matter of law. Voluntary agreements do not set the standards for arbitrated provisions.

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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Petition of Cox Virginia Telcom, Inc.	)	
Pursuant to Section 252(e)(5) of the	)	CC Docket No. 00-249
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with	)	
Verizon-Virginia, Inc. and for Arbitration	)	

REPLY BRIEF OF COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox") hereby submits its reply brief in the above-referenced proceeding. Review of the initial brief of Verizon Virginia Inc. ("Verizon") shows that there is no reason for the Commission to adopt Verizon's position on any of the ten issues remaining between the parties.[1] Consequently, for each issue the Commission should adopt Cox's proposed language, as embodied in the November Joint Decision Point List (the "November JDPL") and the proposed contract language submitted by Cox on November 14, 2001 (the "Cox Proposed Agreement").

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[1] As described in Cox's Reply, filed November 27, 2001 (the "Cox November 27 Reply"), to Verizon's opposition to Cox's Objection and Request for Sanctions (the "Objection"), the proposed contract language submitted by Verizon on November 13, 2001 ("Verizon Proposed Agreement") contains different language concerning termination of the agreement than the language agreed to between the parties. The correct language is contained in the Cox Proposed Agreement, and should be reflected in the final contract. To the extent Verizon is abandoning its earlier agreement, Cox submits that the Commission should nevertheless adopt the language in the Cox Proposed Agreement, for the reasons described in Cox's prefiled testimony. Cox Exhibit 1, Direct Testimony of Prof. Francis R. Collins, Ph.D. ("Collins Direct") at 33-35; Cox Exhibit 2, Rebuttal Testimony of Prof. Francis R. Collins, Ph.D. ("Collins Rebuttal") at 50-52.

I. Introduction

Cox's initial brief and this reply brief demonstrate in detail why the Commission should adopt Cox's positions on each issue before it. Verizon's brief, however, abandons many of the legal and factual claims made in its initial filing and its prefiled testimony, often in favor of inapposite legal theories and unsupported factual claims. Whether the Commission bases its analysis on Verizon's original theories or its newly-minted claims, the evidence of record and the relevant legal authority support Cox's positions on each of the issues in this proceeding.[2]

Certain key elements of Cox's factual and legal showing are significant to many of the issues in this proceeding. In particular, the Commission should not credit Verizon's many claims that CLECs, including Cox, impose significant costs on Verizon. The record shows that, in fact, Verizon bears very few costs when interconnecting with CLECs, either because the costs it complains about actually are very small or because it can recover the costs it does incur. Similarly, Verizon repeatedly makes proposals that violate specific legal requirements under the Communications Act, the Commission's rules or state law. In fact, in many cases Verizon's legal arguments depend upon ignoring directly contrary precedent or even contrary language in the very orders Verizon cites.

The Commission also should give no credence to Verizon efforts to impose uniform, one-size-fits-all requirements on CLECs. The Communications Act specifically contemplates that each carrier is entitled to its own interconnection agreement, with its own specific terms.[3] Indeed, the Act also recognizes that carriers may voluntarily agree to terms that do not conform

[2] Cox will not repeat the arguments made in its initial brief, except to the extent necessary to respond to Verizon's claims. Cox does not, however, waive any of those arguments and, further, by responding to Verizon's newest proposals in this reply brief, does not waive any of the arguments made in the Objection or in the Cox November 27 Reply.
[3] 47 U.S.C. § 252.

to the requirements of Section 251 and 252, without any prejudice to those carriers that seek strict compliance.[4] Further, the record establishes that Cox, AT&T and WorldCom have substantially different networks and business plans, so there is no basis to treat Cox as if it were the same as the other petitioners, or vice versa. While Verizon undoubtedly would prefer uniform interconnection agreements with all other carriers, so would Cox. Verizon is no more entitled to uniformity than any other carrier, and should not be afforded any preference in this proceeding.

In sum, Verizon has not justified its position on any of the ten issues remaining in its interconnection agreement with Cox, while Cox has shown that its positions are reasonable in every case. Consequently, the Commission should adopt Cox's proposals.

II. Network Architecture

The network architecture issues are central to this proceeding, and clearly illustrate Verizon's efforts to shirk its responsibilities under the Communications Act and the Commission's rules.[5] Three of the four Cox network architecture issues address questions of whether Cox should bear the burden of Verizon's obligations as a carrier, and the fourth issue involves an attempt to treat Cox as if it were an incumbent local exchange carrier ("ILEC"). Neither the factual record nor the law can support Verizon's proposals, and they should be rejected.

[4] 47 U.S.C. § 252(a)(3), (c).

[5] Verizon attempts to mix and match various issues under multiple headings in the network architecture section of its brief to give the impression that the issues are interrelated. In fact, the issues are not interrelated except to the extent that Verizon is attempting to shift the burdens of interconnection to Cox in each case and to the extent that Verizon relies on similar, erroneous legal and factual theories to support each of its proposals.

A. There Is No Legal or Factual Basis to Require Cox to Compensate Verizon for the Costs of Transporting Calls from Verizon's Customers to Cox's Network. [Issue I-1]

Verizon devotes significant effort to defending its virtual geographically relevant interconnection points ("VGRIP") proposal. To do so, Verizon must ignore current law and the evidence of record in this proceeding, because neither supports its position. As shown below, there is no legal or factual basis to adopt VGRIP and, therefore, Cox's proposed language should be adopted.[6]

1. There Is No Legal Basis for the Adoption of VGRIP.

Verizon's underlying legal theory in support of VGRIP is that Cox should bear the costs of transporting Verizon-originated traffic through Verizon's network.[7] As shown in Cox's initial brief, this theory is flatly contradicted by the Commission's rules and by relevant case law that specifically addresses this issue.[8] Verizon nevertheless continues to argue this point, relying on repeated misinterpretations of cases, the Communications Act and state commission decisions.

First, Verizon attempts to rely on what it claims is the Eighth Circuit's statement that CLECs are entitled to interconnect with "an incumbent LEC's existing network – not to a yet

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[6] Verizon also has abandoned any defense of its "geographically relevant interconnection points ("GRIP") proposal in its initial brief, and Cox therefore will not provide any further argument as to that proposal. *See* Cox Brief at 6-13 (discussing reasons why Commission cannot adopt GRIP). By responding to Verizon's VGRIP arguments, however, Cox does not waive any of the claims made in the Objection or the Cox November 27 Reply.

[7] Verizon Brief at NA-9, NA-11.

[8] Cox Brief at 7-10 (citing 47 C.F.R. § 51.703(b)); TSR Wireless, LLC v. U S West Communications, Inc., *Memorandum Opinion and Order,* 15 FCC Rcd 11166 (2000) (*"TSR Wireless"*), *aff'd sub nom. Qwest Corporation v. FCC,* 252 F.3d 462 (D.C. Cir. 2001); Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order,* 15 FCC 18354, 18390 (2000); *see also U S West Communications, Inc. v. Garvey,* No. 97-913 ADMAJB, 1999 U.S. Dist. Lexis 22042 at *52-56 (D. Minn. 1999) (251(c)(2) does not require an interconnection point in each local calling area); *U S West Communications v. Hix, et al.,* No. C97-D-152 (D. Colo. June 23, 2000) (reversing state commission requirement that interconnection point be established in every local calling area); *U S West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al.,* No. C97-1320R, 1998 U.S. Dist. Lexis 22361 at *26-27 (W.D. Wash. July 21, 1998) (affirming state commission determination that single point of interconnection per LATA is all Communications Act requires).

unbuilt superior one."[9] Verizon argues that, because Cox and other CLECs use "emerging technologies and new emerging network architectures," Verizon cannot be required to transport its traffic to the CLEC networks.[10] This is a non sequitor: How Cox arranges and designs its network has nothing to do with whether Verizon is required to create "a yet unbuilt superior" network of its own. In fact, the record establishes that traffic currently flows from Verizon to Cox either over jointly-constructed, agreed-to meet point facilities or via Verizon's existing interoffice facilities.[11] In any event, the Eighth Circuit decision addresses the issue of whether an ILEC can be required to build facilities that are superior *in quality* to its current facilities (for instance, that are more reliable than those facilities), not whether it can be required to provide the facilities necessary to interconnect.[12] Nothing in that decision states (or even implies) that carriers are not required to obtain whatever facilities are necessary to accomplish standard interconnection to another carrier's network.

Verizon next argues that Section 252(d)(2)(A) of the Communications Act, which describes how reciprocal compensation rates should be determined, supports the theory that it should not pay for transporting its customers' calls to CLEC networks.[13] This theory is wrong for at least three distinct reasons. First, Verizon's narrow focus on the phrase "mutual and reciprocal recovery" ignores the last half of Section 251(d)(2)(A)(i), which explains that the costs to be recovered are those "costs associated with . . . calls that originate on the network

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[9] Verizon's brief cites the second *Iowa Utilities Board* decision for this proposition, but in fact the quoted language does not appear in that case. Verizon Brief at NA-8 & n.9, (citing *Iowa Utilities Bd. v. FCC,* 219 F.3d 744, 757-58 (8th Cir. 2000) (*"Iowa Utilities Bd. II"*)). The cited case does, however, affirm the court's previous conclusion that the Commission could not adopt rules requiring ILECs to provide interconnection that was superior in quality to that they provide to themselves.
[10] Verizon Brief at NA-9.
[11] Tr. at 1260-62 (Peter J. D'Amico) (traffic flows over mid span meet facilities); 1238-39 (Donald E. Albert) (traffic affected by VGRIP currently routed over existing interoffice facilities).
[12] *Iowa Utilities Bd. II,* 291 F.3d at 757-58.
[13] Verizon Brief at NA-10-12.

facilities of the other carrier."[14] In other words, this provision addresses recovery of *Cox's* costs for calls that "originate on the network facilities of" *Verizon,* not Verizon's costs for those calls.[15] For the same reason, Verizon's claim that the CLEC proposals are inconsistent with Section 251(b)(5)'s mutuality requirement also is incorrect, because Cox maintains the obligation to pay Verizon for any transport and termination of Cox-originated calls on Verizon's network and Verizon maintains the reciprocal obligation for calls in the other direction. In fact, even assuming that the Commission could look at the transport of calls within the originating carrier's network, the same mutuality would exist: Cox and Verizon both would be responsible for the costs of carrying originating calls up to the point of interconnection, and no further.

Verizon's analysis also is inconsistent with existing Commission rules and other precedent that requires carriers to bear all of the costs of transporting their traffic to other networks. As described in Cox's initial brief, Section 51.703(b) specifically forbids the types of charges that VGRIP would impose on Cox, and that requirement has been affirmed by *TSR Wireless.*[16] Because this proceeding cannot be used to modify existing Commission rules, Verizon's arguments must fail. Indeed, even if Verizon's arguments could be considered, it would bear a heavy burden to demonstrate that current interpretations of the Communications Act that have been affirmed by the D.C. Circuit should be reversed.[17]

Moreover, even if Verizon's interpretation of Section 252(d)(2)(A)(i) were correct, it would not support the VGRIP proposal. Verizon's analysis focuses solely on *Verizon's* costs,

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[14] 47 U.S.C. § 252(d)(2)(A)(i).
[15] Conversely, Verizon is entitled to recover the costs it incurs to carry calls that originate on Cox's network, and Cox cannot be reimbursed for the costs of bringing those calls to Verizon.
[16] Cox Brief at 7-8.
[17] *Action for Children's Television v. FCC*, 821 F.2d 741, 745 (1987) (reversing elimination of children's television commercial limits for failure to give reasoned explanation to justify policy change) (citing *Motor Vehicles Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).

but as shown above CLECs also incur costs to transport calls originating on their networks. Under VGRIP, Verizon would bear few or none of those transport costs, which instead would be borne by CLECs. Consequently, the requirement for "mutual and reciprocal" cost recovery would not be met.[18] Thus, under either current law or Verizon's novel reinterpretation, VGRIP cannot be justified.

Verizon's reliance on state legal interpretations also is misplaced. Initially, and as described in *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania,* a case Verizon cites in its brief, there is no reason for the Commission to accord any weight to state interpretations of the Communications Act or the Commission's rules.[19] As the Third Circuit explained, unlike Commission interpretations, state interpretations are not entitled to *Chevron* deference because the states have no special expertise in federal law and, unlike the Commission, have not been assigned an interpretive role by Congress.[20]

In any event, most of the cases cited by Verizon do not support its position. For instance, the Maryland Public Service Commission specifically held that "Verizon's GRIP and VGRIP would subvert" its prior orders on interconnection.[21] Similarly, the New York Public Service

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[18] For similar reasons, Verizon's citation to Section 252(d)(2)(B)(i), which permits carriers to offset reciprocal compensation obligations, also is inapposite. Not only does VGRIP transfer costs that do not fall within the reciprocal compensation obligation, but the offset provision refers to "mutual" recovery of costs. VGRIP would eliminate most or all of Verizon's obligations to bear the cost of transporting originating traffic on its network while leaving Cox's obligations to carry its own originating traffic unchanged.

[19] *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania,* Nos. 00-2257 and 002258, 2001 U.S. App. WL 1381590, at *19 (3rd Cir. Nov. 2, 2001). Verizon cites this case for the proposition, stated in dicta, that it would be appropriate for the Pennsylvania Public Utilities Commission to consider whether Verizon was subject to excessive costs for interconnection. *Id.* at *21. Even if this statement were not dicta, it does nothing more than state that a regulator could consider whether to shift costs, not that shifting costs is permissible or desirable.

[20] *Id.* at *19. *See generally Chevron Inc. v. Natural Resource Defense Council,* 467 U.S. 837, 842-45 (1984) (holding that a reasonable statutory interpretation by a federal agency in its area of expertise is entitled to deference from a reviewing court).

[21] Arbitration of Sprint Communications Company, L.P. vs. Verizon Maryland Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, *Order No. 77320,* Case No. 8887 at 28 (Md. P.S.C. Oct. 24, 2001). This statement appears in the same paragraph as the language cited by Verizon.

Commission specifically rejected VGRIP, in part because it concluded that Verizon's proposal would affect compensation for traffic that had nothing to do with Verizon's concerns.[22] Even Pennsylvania merely accepted the Sprint proposal without commenting on the merits of GRIP or VGRIP.[23] Consequently, none of these cases provides any support for VGRIP and Verizon has not made out a credible case that VGRIP is permissible under current law.

2. Verizon Has Not Established the Factual Basis for VGRIP.

Verizon also has not established the factual underpinnings necessary to support VGRIP in this proceeding. While Verizon refers to CLECs attempting to "maximize" Verizon's costs of interconnection, the record shows that Verizon incurs very few costs to transport calls to Cox because Verizon uses existing facilities to do so and because Cox's traffic is a small fraction of the total traffic carried on Verizon's network.[24] Similarly, Verizon's claim that it loses toll revenues when it must transport a call to a distant CLEC switch is nonsense. Even under Verizon's proposed contract language or for calls carried entirely within Verizon's network, the distance a call travels from switch to switch does not determine whether the call is toll or local.[25] As Verizon's own witness admitted, the purpose of VGRIP actually is to transfer Verizon's costs to Cox, not to balance costs or responsibilities, and that is no justification for adopting Verizon's proposal.[26]

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[22] Joint Petition of AT&T Communications of New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc., *Order Resolving Arbitration Issues*, Case No. 01-C-0095 at 27 (N.Y. P.S.C. July 30, 2001).

[23] Petition of Sprint Communications Company, L.P. for an Arbitration Award of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements With Verizon Pennsylvania, Inc., *Opinion and Order*, Case No. A-310183F002 at 52-56 (Pa. P.U.C. Oct. 14, 2001). Because the Pennsylvania Commission adopted the Sprint proposal, it is not possible for the Commission to know what Pennsylvania would have done if it had been faced with the specific proposals in this proceeding.

[24] Verizon Brief at NA-2; Tr. at 1238-39 (D'Amico) (use of Verizon facilities for transport), 1472 (Albert) (comparison of relative traffic volumes)

[25] Verizon Brief at NA-3.

[26] Tr. at 1240-45 (D'Amico).

The practical effects of this cost shift would be particularly pronounced in Cox's case because Cox operates in a single-tandem LATA.[27] Under VGRIP, a CLEC in a single-tandem LATA is required to accept responsibility for calls in each local calling area, which in most parts of Virginia means at each end office.[28] That means that Verizon would bear no responsibility at all for transporting calls past its end offices, and that nearly all of the costs of completing Verizon-originated calls would shift to Cox.[29] Even worse, Verizon would then pay Cox only the end office rate for such calls unless Cox established collocation at the Verizon end office, further shifting costs from Verizon to Cox.[30] Consequently, despite Verizon's claims that VGRIP would impose few costs on CLECs, it would be very costly for Cox.

At the same time, the testimony establishes that the current regime imposes very few actual costs on Verizon because it uses existing network facilities to transport traffic to Cox. In other words, any money paid by Cox to Verizon under VGRIP essentially would be pure profit. Cox would be faced with the choice of making these revenue transfers to Verizon or incurring substantial costs to build new, and otherwise unnecessary, transport and collocation facilities. In either case, Cox would become substantially less efficient, with no concomitant benefit to consumers.[31] Thus, given that there is no evidence of any meaningful benefit of VGRIP to

[27] As described in the Objection, the specific language proposed to Cox appears to impose the single tandem LATA requirements on Cox even in multiple tandem LATAs. Objection at 10-11.
[28] This is not the case in northern Virginia, but is true in most of the Norfolk LATA.
[29] Cox Brief at 11, 14.
[30] *Id.* at 9. As described in Cox's initial brief, the language limiting Cox's compensation to the end office rate violates Section 51.711(a)(3) of the Commission's rules, which bases the determination of how a CLEC switch will be treated for reciprocal compensation purposes on the area served by the switch. *Id.* The VGRIP language also conflicts directly with agreed-to language in Section 5.3 that affords Cox tandem rate compensation where its end office serves the same geographic area as Verizon's tandem.
[31] Verizon's speculation that Cox will move to a network architecture that more closely resembles Verizon's, regardless of whether VGRIP is adopted, is entirely unsupported by the record. Even the quotation in Verizon's pleading, which is from an AT&T witness and refers only to AT&T, does not support the notion that CLECs will duplicate inefficient ILEC network architecture. *See* Verizon Brief at NA-9, n.10 (quoting Tr. at 1013 (Talbott)).

Verizon, while Cox would incur substantial costs, there is no rational basis to adopt the VGRIP proposal.

Finally, the VGRIP language in the Verizon Proposed Agreement, filed nine days *after* the November JDPL, has created a new issue: having abandoned its original GRIP proposal and discarded previously agreed-to contract language that established IPs at Cox's and Verizon's switches, Verizon's overall network architecture now identifies *no interconnection points* to which Cox may deliver its originating traffic to Verizon.[32] All that is offered in this regard is a Verizon-friendly adoption clause that appears to allow Cox, to establish an IP for the delivery of Cox's traffic to Verizon at the location of another carrier's IP, to the extent that Cox can guess the location of other carriers' IPs, but only for the same NPA-NXXs.[33] This omission makes it impossible to adopt Verizon's VGRIP proposal.

B. Verizon Should Pay the Reasonable Costs of Transporting Calls to Cox's Facilities. [Issue I-2]

Verizon's submissions concerning Issue I-2 demonstrate that there is no legal or factual basis for its proposal to eliminate Cox's distance sensitive rates for transport of Verizon traffic.[34]

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[32] *Compare* Cox Petition, Exhibit 2 at 14 (Cox language for section 4.2.2 stating that "Each Party shall establish Interconnection Points ("IPs") at the available locations designated in Schedule 4.1" and providing for "mutually agreed-upon IPs on the Cox network" and IPs on the Verizon network) *and* Verizon Answer, Exhibit C-2 at 14 (same) *with* Verizon Proposed Agreement § 4 (deleting all previous text); November JDPL, Network Architecture at 21-23. This issue also is discussed in Cox's November 27 Reply to Verizon's opposition to the Objection. Cox November 27 Reply at 8-9.

[33] Verizon Proposed Agreement at § 4.2.2.2 ("Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NPA-NXXs served by those IPs. To the extent that any such Cox-IP is not located at a Collocation site at a Verizon Tandem (or Verizon End Office Host) or other Verizon End Office, then Cox shall permit Verizon to establish physical interconnection at the Cox-IP, to the extent such physical interconnection is technically feasible.").

[34] Exactly what constitutes Verizon's proposal remains the subject of the Objection. The language to which Cox believes Verizon is bound can be found in the September JDPL, Network Architecture at 36-37. Verizon's revised proposal, to which Cox objects, can be found in the November JDPL, Network Architecture at 26.

Cox's proposal for transport of Verizon traffic over Cox facilities is reasonable and should be adopted.

Verizon's brief does not attempt to establish a legal basis for its proposal, which is unsurprising because it violates at least two settled Commission policies. First, the proposal would penalize Cox for exercising its right to choose its points of interconnection, simply because its choices might be perceived as inconvenient to Verizon.[35] Second, Verizon's proposal would require the Commission to revise its policy of treating Cox and Verizon as co-carriers to one that treats Cox as a subservient carrier in a Verizon-dominated relationship.[36] This would be the only explanation for subjecting Cox to Verizon's distance sensitive transport rates while insulating Verizon from Cox's.[37] Verizon's brief ignores these legal obstacles to its proposal, but the Commission cannot.

Lacking a legal rationale, Verizon argues that, in the absence of VGRIP, fairness dictates that Verizon be free from distance-sensitive transport rates to protect it from "excessive transport rates."[38] This argument is simply wrong. Several regulatory "control mechanisms" already ensure that Cox's rates are reasonable, including the Commission's general common carrier rules – requiring, for example, non-discriminatory rates – and state and federal regulatory oversight of

[35] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd at 15499, 15608-09 (CLECs entitled to choose points of interconnection) ("*Local Competition Order*"); 47 C.F.R. § 51.305(a) (same).
[36] *Local Competition Order*, 11 FCC Rcd at 15981.
[37] Tr. at 1255-56 (D'Amico) (Verizon charges distance sensitive rates to Cox for equivalent transport).
[38] Verizon Brief at NA-17. Verizon's "cost-control" argument essentially claims that if Verizon cannot coerce CLECs to establish Verizon-efficient IPs through VGRIP, then it should receive discount carriage arrangements.

Cox's rates and practices.[39] Indeed, Verizon has admitted repeatedly that it does not deem any of Cox's rates unreasonable, and has never challenged a Cox rate before any regulatory body.[40]

Moreover, with respect to Cox, Verizon's fears regarding the costs of a CLEC selecting a single POI in a LATA or "select[ing] a POI 87 miles from a Verizon VA end office serving a Verizon VA local end user customer," are without any basis in the record.[41] Under Cox's proposal, Verizon is required to purchase transport only between the Cox switch and the nearest Verizon serving wire center – currently, a maximum distance of four miles – not between the Cox switch and the originating Verizon switch.[42] Verizon's witness conceded that this distance is a reasonable one.[43] If Verizon does not want to pay Cox's admittedly reasonable rates, it retains the right to seek a mid-span fiber meet, which would eliminate Cox's entrance facilities transport charges entirely.[44] Verizon's proposal therefore lacks even the semblance of a factual predicate.

Finally, Verizon's brief provides no support for the new language that it included in the November JDPL allowing it to set all Cox IPs.[45] Consequently, even if the Commission finds that this proposal is properly within this proceeding, it should treat the new language as unsupported and reject it as being abandoned by Verizon.

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[39] Collins Direct at 32; Collins Rebuttal at 47-48; *see also* Cox Exhibit 24 (Verizon would challenge Cox rates before state and federal regulatory bodies if it deemed them unreasonable).
[40] Cox Exhibit 22 (only Cox "rate" Verizon deems unreasonable is late payment fee); Cox Exhibit 23 (no Verizon rate complaints filed against Cox).
[41] Verizon Brief at NA-17-18.
[42] Cox Brief at 17-18 (describing entrance facility proposal); Collins Rebuttal at 13 (four mile distance between Cox switches and Verizon wire centers); Tr. at 1028-29 (Collins); Cox Exhibit 7 (illustrating Norfolk LATA).
[43] Tr. at 1259 (D'Amico) (four mile distance reasonable).
[44] Collins Direct at 12; Collins Rebuttal at 13-14; Tr. at 1022-24 (Collins).
[45] November JDPL, Network Architecture at 26 (section 4.5.3).

C. Verizon Has No Right to Collocation at CLEC Facilities. [Issue I-3]

Verizon's argument that "fairness" entitles it to reciprocal collocation rights at CLEC facilities is precluded by the Communications Act and the Commission's rules. Moreover, Verizon has failed to produce any evidence that the interconnection options proposed by Cox are insufficient or inequitable. Consequently, Verizon's proposal must be rejected.

Verizon concedes, as it must, that the Communications Act does not require Cox to grant Verizon reciprocal collocation rights, but it goes on to argue that the Commission still may "allow[] Verizon VA to interconnect with the CLECs via a collocation arrangement at their premises."[46] This would be true if collocation were part of a voluntary agreement, but Verizon is asking the Commission to require such a provision to be included in this arbitrated agreement.[47] This result would be patently inconsistent with the Communications Act and the Commission's rules, which (1) give only CLECs the right to collocation; (2) require that ILEC obligations not be placed upon CLECs absent circumstances not present here; and (3) forbid states from imposing ILEC obligations on CLECs absent a Commission order.[48] Because the Act also forbids the adoption of provisions in arbitrated interconnection agreements that are contrary to the statute and the implementing rules, it unequivocally bars Verizon's proposal.[49] Moreover, the Commission specifically has held that non-ILECs may meet their interconnection

[46] Verizon Brief at NA-19.
[47] *Compare* 47 U.S.C. § 252(a)(3) (voluntary agreements are "without regard" to statutory requirements), *with* 47 U.S.C. § 252(c) (arbitrated agreements must "meet the requirements of Section 251, including the regulations established by the Commission . . .").
[48] 47 U.S.C. § 251(c)(6) (collocation rights apply only to ILECs); 47 U.S.C. § 251(h)(2) (prescribing criteria for imposing ILEC obligations on CLECs); 47 C.F.R. § 51.223(a) (forbidding states from placing ILEC obligations on CLECs).
[49] 47 U.S.C. § 252(c).

obligations through mechanisms of their choice other than collocation, including indirect interconnection.[50]

Even if the law were not clear, Verizon presented no evidence that fairness requires reciprocal collocation with Cox in Virginia. Instead, the facts in this proceeding demonstrate conclusively that Verizon is not injured by the lack of collocation, while Cox would be harmed by Verizon's proposed provision.[51] This evidence demonstrates that Verizon has interconnection options that are entirely fair and adequate to meet its interconnection needs. Indeed, Verizon's primary focus appears to be to avoid all costs of interconnection, so it is unlikely that Verizon actually wants collocation.[52]

What Verizon really seeks is for the Commission to reconsider existing requirements, something the Commission should not and cannot do in its role as an arbitrator.[53] Therefore, the Commission should reject Verizon's reciprocal collocation proposal and affirm that the interconnection options already agreed to and those proposed by Cox provide Verizon with all that it is entitled to under the law and the facts.

[50] *Local Competition Order*, 11 FCC Rcd at 15991. Given this holding, Cox's proposed interconnection choices, including fiber meets and interconnection at the Verizon wire center nearest a Cox switch, must be deemed reasonable as a matter of law.

[51] In the absence of reciprocal collocation, Verizon has the options of requesting a mid-span fiber meet or bringing its facilities to the Verizon wire center nearest a Cox switch. Verizon's witnesses have generally conceded that each of these options is reasonable. Tr. at 1270-71 (Albert) (mid-span meets are available and resolve need for reciprocal collocation); Cox Exhibit 22 (Cox rates are reasonable); Tr. at 1259 (D'Amico) (transport distance reasonable); *see also supra* Section II(B). Cox, on the other hand, would suffer considerable competitive harm if forced to offer Verizon physical collocation. Collins Direct at 13-14 (describing additional facilities costs associated with reciprocal collocation); Tr. at 1037 (Collins) (same).

[52] Despite the obvious facilities constraints that Verizon's proposal would place on CLECs, Verizon objects even to AT&T's reasonable practice of charging Verizon for space licenses at AT&T facilities. Tr. at 1033-36 (Christopher Nurse).

[53] Prehearing Conference, July 10, 2001, Tr. at 13 (Dorothy Attwood).

D. Verizon Has Not Established Any Colorable Basis for Limiting Cox's Rights to Interconnect at the Tandem Switch. [Issue I-4]

Through this issue, Verizon seeks to require Cox to duplicate Verizon's network by interconnecting at Verizon end offices whenever Cox's traffic exceeds Verizon's internal volume threshold, that is, the equivalent of one DS-1. As described in Cox's initial brief, to prevail on this issue Verizon must show that it is technically infeasible to permit interconnection above the level of one DS-1. Verizon makes no such showing and the other justifications it proffers are insufficient to support adoption of its proposal rather than Cox's compromise.

Initially, Verizon makes no attempt to show that interconnection at the three DS-1 level is technically infeasible and the Commission's rules require such a showing before an ILEC can refuse a requested interconnection. In fact, the record would not support a claim of technical infeasibility, in part because other interconnecting carriers are not subject to any constraints on the amount of traffic they can bring to a tandem.[54] Moreover, Verizon also has not shown that CLECs are causing the claimed "tandem exhaust" problem, and the evidence shows that CLECs account for only a small fraction of tandem trunks in use.[55]

These failures are enough for the Commission to reject Verizon's proposal, but Verizon's arguments in its initial brief are flawed as well. First, the one DS-1 standard is unrealistic in light of Verizon's practices and modern engineering standards. While Verizon claims that this standard is consistent with its own practices, the actual contractual language proposed by Verizon is more stringent than the undocumented practices Verizon describes.[56] Most notably,

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[54] Cox Brief at 24-25, (citing Tr. at 1276 (Albert)).
[55] Cox Brief at 24 (citing Cox Exhibit 12). As described in Cox's initial brief, Verizon has not provided any useful evidence that CLEC traffic growth is a significant factor in tandem exhaust. In particular, Verizon's claims of growth rates of 100 percent are not meaningful because the growth is based on a small initial traffic level. Cox Brief at 24-25 & n.95.
[56] Verizon Brief at NA-27.

Verizon's own witness acknowledges that a one-month spike in traffic would not cause Verizon to install direct trunks in its own network, but the contract language proposed by Verizon would require Cox to install direct trunks if the traffic level to an end office exceeded a single DS-1 at any time.[57]

Second, the testimony is consistent that the traffic level necessary to justify a new direct end office trunk group, in light of the technology now used by CLECs, is far greater than one DS-1 or even the three DS-1 standard proposed by Cox. Rather, the breakeven point is closer to ten or even fourteen DS-1s, because modern network design is based on DS-3 interoffice facilities, which have the capacity to carry traffic up to the level of 28 DS-1s.[58] Verizon's internal standards, on the other hand, are based on studies so old that Verizon's own witness cannot recall when they were performed.[59] The Commission, consequently, should accord very little weight to those standards.[60]

Further, Verizon's claim that its standards must be adopted to avoid discrimination simply is incorrect. If nothing else, adopting Verizon's standards would be discriminatory because they are not applied to all classes of carriers, even those that use relatively similar levels

[57] Tr. at 1184-87, 1272-74 (Albert); November JDPL, Network Architecture at 29-30.

[58] Tr. at 1422-24 (Collins); 1427-28 (Talbott). Verizon's attack on Dr. Collins for failure to provide sufficient specificity about how Cox derives its threshold is pointless. Verizon cannot point to any contrary testimony and, if anything, the testimony suggests that other carriers have much more conservative breakeven points. Tr. at 1427-28 (Talbott).

[59] Tr. at 1421 (Albert).

[60] In this context, Verizon's suggestion that Cox wants to dictate how Verizon engineers its network is entirely backwards. Verizon Brief at NA-27. If Verizon wishes to establish direct end office trunks of its own at the DS-1 level, either within its network or to carry traffic from Verizon's network to Cox's network, Cox does not object. In fact, Cox's proposed contract language would permit Verizon to establish its own direct trunks at any traffic level. Cox Petition, Exhibit 2 at 15, 18 (sections 4.2.4, 5.2.1). Further, nothing about Cox's proposal would change Verizon's current network architecture, which already provides for trunks between the tandem and every subtending end office. Tr. at 1226-29 (Albert) (discussing routing of overflow traffic). Verizon's proposal, however, would dictate Cox's network architecture by requiring direct trunking at levels that Cox would not deem economically feasible.

of trunk capacity.[61] Moreover, the possibility that some carriers might accept a one DS-1 standard voluntarily has no effect on Cox's rights to interconnection, just as Cox's willingness to accept the three DS-1 standard has no effect on AT&T's rights. It is not discrimination for one carrier to insist on its rights when others do not.[62]

Similarly, Verizon's theory that adopting the three DS-1 threshold in Cox's agreement would violate Section 251(c)(2)(C) is unsupportable. As described above, the "equal in quality" language in that provision refers to matters such as reliability.[63] It does not refer to the quantity of service purchased by a particular carrier (which, in any event, would be much smaller for Cox than for Verizon). Thus, adopting a threshold of three DS-1s would not violate this requirement. In any event, there is no evidence of record that would support this claim, and in the absence of any factual support, this claim must be dismissed.[64]

Verizon's related claim that the Cox proposal "could negatively impact other carriers and local end users" also is unsupported by any evidence, and Verizon does not even attempt to cite to anything to support it.[65] The evidence actually is to the contrary, because Verizon has demonstrated that it can and does plan to account for increases in traffic and trunks at its tandems, then executes those plans by expanding capacity or installing new tandems.[66] Thus, there is no meaningful likelihood of disruptions in Verizon's service to carriers or end users.

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[61] Tr. at 1273-74 (Albert) (no direct trunking trigger from switched access or interexchange providers); Cox Exhibit 14 (no DS-1 direct trunking trigger for switched access providers).

[62] As described above, a voluntary agreement need not conform to the legal requirements of Section 251, including the requirement that Verizon provide interconnection on nondiscriminatory terms and conditions. *See supra* n.47.

[63] *Local Competition Order,* 11 FCC Rcd at 15614-15 (1996) ("probability of blocking in peak hours and transmission standards" are among the factors in determining whether interconnection is "equal in quality").

[64] *See e.g., W.R. Grace & Co. v. U.S.*, 261 F.3d 330, 338 (3d Cir. 2001) (requiring findings of fact to be based on record evidence to avoid reversal of decision as arbitrary and capricious); 5 U.S.C. § 706(2)(A); *see also Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951) (agency findings of fact must be supported by evidence in record).

[65] Verizon Brief at NA-28.

[66] Verizon Exhibit 4, Direct Testimony of Donald Albert and Peter D'Amico ("Albert/D'Amico Direct") at 37-38; Tr. at 1101-1105 (Albert).

In addition, if Verizon's theory were true, it could not provide tandem interconnection above a DS-1 level to any other carrier or class of carriers because doing so would be unreasonably discriminatory. As noted above, however, the evidence establishes that Verizon does permit non-CLECs to interconnect at Verizon tandems above the DS-1 level, so Verizon is acting inconsistently with its own claim.

Finally, Verizon's initial brief does not consider the alternatives it has to address its supposed tandem exhaust problem. As Cox has described, those alternatives include reducing the underutilization of existing trunks and employing more direct trunking from its end offices to CLEC switches.[67] Both of these approaches would reduce the need for new tandem switches, would not interfere with legitimate CLEC network architecture decisions and would be consistent with the requirements of the Communications Act and the Commission's rules.

E. Cox Should Not Be Required to Perform Forecasting Functions on Behalf of Verizon. [Issue I-7]

The forecasting issue is, in many ways, the best example of how Verizon attempts to shift its duties and obligations to Cox. Verizon's proposal is for Cox to perform all of the forecasting for traffic exchanged between the parties – for both traffic from Cox to Verizon and traffic from Verizon to Cox. In effect, Verizon's rationale for this proposal is that, facing the same limitations as Cox in forecasting traffic not entirely under its control, Verizon does not want to be bothered. That is not sufficient reason for Verizon to avoid one of its basic obligations as a co-carrier. As described below, Verizon justifies neither its unwillingness to perform outbound

[67] Cox Brief at 25. While Verizon says that Cox "concedes" that Verizon may employ direct trunks from its end offices to Cox's switch, the contract language always has permitted such trunking. Verizon Brief at NA-26 n.44; Cox Petition, Exhibit 2 (proposed contract) at 15, 18 (Sections 4.2.4, 5.2.1).

forecasting nor the shift in engineering costs to Cox that Verizon's forecasting proposal would entail.

First, Verizon has failed to demonstrate that it cannot forecast its outbound traffic as well as Cox can. In its effort to demonstrate that Cox could provide the forecast Verizon wants, Verizon admits that it believes "trending" forecasts would be sufficient.[68] The record reflects, however, that Verizon can perform a trending forecast as well as Cox, because trending is based entirely on previous traffic patterns.[69] Further, while Verizon argues that it does not have access to Cox's "marketing and business plans," Cox already has agreed to provide Verizon with information on anticipated changes in traffic patterns, so Verizon will have all the data necessary to perform forecasts of its outbound traffic.[70]

Moreover, Verizon concedes that it can disregard any forecast provided to it by Cox if it wishes. The record shows that Verizon will review any forecasts provided to it and modify them based on its own data.[71] In other words, there is no reason to believe that a forecast of Verizon's outbound traffic performed by Cox will be anything more than busy work.[72]

Verizon also asserts that forecasting Verizon's outbound traffic will result in "no burden on the CLECs." This is incorrect. As described in Cox's testimony (and not disputed by Verizon), a carrier must devote significant resources to preparing forecasts.[73] Moreover, if a

[68] Verizon Brief at NA-47.
[69] Tr. at 1553-55 (Collins).
[70] Collins Direct at 27. In contrast, Verizon never has proposed to provide information concerning changes in its traffic patterns to Cox. November JDPL, Network Architecture at 31 (section 10.3.5).
[71] Tr. at 1508-1512 (Albert).
[72] In this regard, the Massachusetts decision cited by Verizon is not relevant to this case because the Massachusetts order requires Verizon to provide facilities to meet the CLEC's forecast. Petitions of Media One Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement, D.T.E. 99-42/43, 99-52, at 88-90 (Mass. Dept. of Telecommunications and Energy August 25, 1999). Verizon makes no such promises here and, in fact, indicates that it will feel free to disregard Cox's forecast if it so desires.
[73] Collins Direct at 27.

carrier must prepare a forecast that it otherwise would not prepare, it will bear costs it otherwise would not bear. While Verizon asserts that Cox already performs these functions, there is no evidence to that effect, and it would not matter if Cox did so: Those costs properly are borne by Verizon, not Cox. Moreover, as noted above, Verizon never has offered to provide Cox with the information, available only to Verizon, necessary to prepare an accurate forecast, so Cox literally would be unable to do so.[74]

Finally, Verizon's claims concerning other CLECs and their willingness to provide forecasts of Verizon's outbound traffic are irrelevant to the question of whether CLECs should be required to do so. CLECs may undertake obligations voluntarily that cannot be required under an arbitrated agreement.[75] Moreover, Verizon provides no explanation for other CLECs' willingness to prepare such forecasts. It could be, for instance, that Verizon has threatened not to provision outbound trunks unless the CLECs do so. This is a fairly common, if unlawful, practice among certain ILECs, and it would explain why CLECs are willing to expend the resources to complete a forecast that Verizon otherwise would perform for itself. Regardless of Verizon's claims, however, the fact remains that every interconnection agreement Cox has executed with any other ILEC (including Verizon-Rhode Island and Verizon South in Virginia), any CLEC and any CMRS provider requires each carrier to forecast its own outbound traffic.[76]

In short, Verizon has not explained why it is unable to fulfill its normal common carrier duty of providing a forecast of its own outbound traffic, or why Cox should be required to bear this burden. Consequently, the Commission should reject Verizon's language and adopt Cox's proposal for Issue I-7.

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[74] Collins Rebuttal at 38-40; November JDPL, Network Architecture at 30.
[75] *See supra* Section I.
[76] Cox Petition at 18; Collins Direct at 27.

III. Intercarrier Compensation

A. The Commission Should Adopt Language that Fully Implements the Requirements of the *ISP-Bound Traffic Order.* [Issue I-5]

Verizon's underlying theory in support of its proposal for ISP-bound traffic is that the Commission should let the parties work things out. As the history of this issue and Verizon's actions since adoption of the *ISP-Bound Traffic Order* show, this approach is doomed to failure.[77] Review of Verizon's initial brief also shows that Verizon has very few disagreements with Cox's proposal for this issue and, as shown below, those claims are baseless.[78]

Initially, the Commission should be extremely skeptical of Verizon's claim that it has "a willingness to work with [petitioners] to craft reasonable contract language." This claim is belied by Verizon's behavior between the adoption of the *ISP-Bound Traffic Order* and the hearing, when Verizon attempted to unilaterally impose its interpretation of that order on CLECs in Virginia, including CLECs that were operating under pre-existing contracts.[79] If Verizon had any intention of working with CLECs, it at least would have consulted them before it acted. Verizon's failure to do so speaks volumes about its intentions and, by itself, is sufficient

[77] *See* Cox Brief at 31-32.

[78] Based on Verizon's initial brief, the Commission should conclude that Verizon has no objection to Cox's provisions concerning, among other things, calculation of the 3:1 ratio and the rates to be charged. Verizon also makes no effort to defend its special audit provision, which should be rejected for the reasons described in Cox's initial brief. *See* Cox Brief at 34.

[79] Verizon Exhibit 55. Indeed, in Cox's case the existing contract actually had been the subject of a specific determination by the Virginia Commission requiring Verizon to pay reciprocal compensation on ISP-bound traffic. Petition of Cox Virginia Telcom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc., Case No PUC970059, *Final Order* (Virginia S.C.C. Oct. 24, 1997). The California Public Utilities Commission and the Maryland Public Service Commission recently rebuked Verizon for similar actions in California. Order Instituting Rulemaking on the Commission's Own Motion Into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Service Providers Modems, *Opinion on Pac-West Motion on Implementation of FCC Order on Internet Traffic*, Decision 01-11-067 (rel. Nov. 29, 2001) (implementing Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9131 (2001) ("ISP-Bound Traffic Order")); Letter from F. Greer, Maryland Public Service Commission, to M. Hazard and D. Hill, Counsel for Core (June 13, 2001), (the "*Core Decision*"). In the *Core Decision*, the Maryland Commission held that the *ISP-Bound Traffic Order*, by its terms, is not self-executing and must be implemented by invoking the change of law provisions in interconnection agreements.

evidence for the Commission to conclude that it should not adopt Verizon's vague language and should, instead, adopt Cox's specific contractual provisions on this issue.[80]

In addition, Verizon's specific objections to Cox's language are insubstantial. First, Verizon argues that Cox's language would result in certain traffic that is subject to Section 251(g) of the Communications Act being treated improperly as local exchange traffic.[81] There are three reasons why the Commission should dismiss this argument. As a threshold matter, Verizon has provided no evidence that Cox's language would subject any actual toll traffic to reciprocal compensation.[82] While Verizon's initial brief says that Cox claims toll traffic would be included in reciprocal compensation traffic, Cox has made no such claim and Verizon does not point to any Cox contract language, filing or statement to that effect.[83] In fact, Cox's definitions section states that "[g]enerally speaking, the term 'Local Traffic' shall have the same meaning, when used in this Agreement, as the term '251(b)(5) traffic'" in the *ISP-Bound Traffic Order* and adopts the Commission's definition of "Internet Traffic."[84] While Verizon claims it has proposed language that differs in that it "excludes § 251(g) traffic" from reciprocal

[80] Verizon further demonstrates the importance of specificity in its discussion of calculation of the growth cap. Although Verizon indicates that it agrees with Cox's calculation of the 2001 growth cap, it disagrees with Cox's calculation of the 2002 growth cap. Verizon Brief at IC-10 n.4. Inexplicably, Verizon fails to acknowledge that Cox's proposed contract uses nearly the exact language Verizon cites from the *ISP-Bound Traffic Order*. *Compare* November JDPL, Intercarrier Compensation at 12 (charges apply "only up to a ceiling equal to the number of Internet Traffic minutes for which the terminating Party *was entitled to compensation in 2001*, plus a ten percent growth factor") (emphasis supplied) with *ISP-Bound Traffic Order*, 16 FCC Rcd at 9187 (cap equal to "minutes for which that LEC *was entitled to compensation under that agreement in 2001*, plus another ten percent growth factor") (emphasis supplied). Cox has concluded, and reflected in its contract language, that the phrase "entitled to compensation" must refer to the previous year's cap, not the previous year's actual traffic, because there is no mention of actual traffic levels in the *ISP-Bound Traffic Order*. Verizon does not explain why it disagrees with this conclusion, suggesting once again that Verizon would be content to leave this provision ambiguous and subject to Verizon's reinterpretation.

[81] Verizon Brief at IC-3-5.

[82] *See id.* at IC-3-4 (no description of such traffic). To the extent Verizon is referring to so-called "virtual FX" traffic, that traffic is addressed under Issue I-6, and should not be considered under this issue. *See infra* Part III(B).

[83] Verizon Brief at IC-4.

[84] November JDPL, Intercarrier Compensation at 8 (definitions of Internet Traffic and Local Traffic in Cox proposed language).

compensation, Verizon's language arguably would exclude "measured Internet traffic" from all compensation, a result that is not permissible under the *ISP-Bound Traffic Order*.[85]

For that matter, Verizon has not identified, either in its brief or during the hearing, any meaningful category of "Section 251(g) traffic," other than ISP-bound traffic and access traffic, that should be excluded from reciprocal compensation.[86] In the absence of any evidence that there is a substantial amount of such traffic, Verizon's language is entirely unnecessary.

Finally, Verizon misconstrues the operation of Section 251(g). Traffic subject to Section 251(g) is treated under existing rules until such time as the Commission adopts new rules governing that traffic.[87] Thus, to the extent that traffic previously was treated as local exchange traffic, it should continue to be treated in that way under the new Verizon-Cox agreement, unless and until the Commission changes the treatment of that traffic. Verizon's language, which would exclude Section 251(g) traffic from reciprocal compensation, improperly reverses that presumption. Moreover, because Verizon's language does not specify precisely what is excluded from reciprocal compensation, it is a recipe for ongoing disputes of the sort that have plagued CLECs and the Commission for the past five years.

Verizon also objects to Cox's change of law provision. Most of Verizon's objections relate to retroactivity language proposed by AT&T and WorldCom that does not appear in Cox's proposal, and therefore is irrelevant to the Commission's consideration of Cox's proposed

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[85] *Id.* at 10-11 (Verizon section 5.7.2, stating that Measured Internet Traffic is not subject to reciprocal compensation, but not stating how compensation for that traffic will be established).
[86] Verizon Brief at IC-3-4. The agreement already provides for the treatment of traditional access traffic. Moreover, during the hearing it was established that certain services that might generate traffic subject to Section 251(g) are not offered in Virginia. Tr. at 1983-84 (Richardson).
[87] 47 U.S.C. § 251(g) (no change in treatment of traffic until Commission acts); *Local Competition Order,* 11 FCC Rcd at 15507 (determining that 1996 Act did not require changes in access charge rules as part of initial rulemaking); *see also ISP-Bound Traffic Order,* 16 FCC Rcd at 9169-70 (noting that intrastate Section 251(g) services remain subject to state rules until superseded).

language. The only part of the argument that applies to Cox's proposal is Verizon's claim that there is no need for a specific change of law provision for reciprocal compensation. This is incorrect for at least two distinct reasons. The first is that the history of this issue, both between ILECs and CLECs and in the Court of Appeals, makes it appropriate to include a specific change of law provision. Second, Verizon's behavior in response to the *ISP-Bound Traffic Order* makes it particularly important for Cox to ensure there is specific language in the agreement that requires Verizon to cooperate with Cox. Otherwise, Verizon will continue to engage in unilateral action like its decision to implement its interpretation of the *ISP-Bound Traffic Order* without consulting Cox or any other CLEC.[88] Consequently, specific change of law language concerning ISP-bound traffic is necessary and should be adopted along with the remainder of the Cox proposal.

B. The Agreement Should Use Recognized Industry Standards in Rating Calls. [Issue I-6]

Verizon's discussion of Issue I-6 is largely an exercise in semantics. Services are characterized as local or toll based almost entirely on Verizon's analysis of what characterization will best serve its purposes, rather than on the way customers and the telephone network treat them. The Commission's analysis should focus on the real world, including what customers expect and what the industry can do to rate calls. That focus will demonstrate that the Commission should adopt Cox's position and that the new agreement should contain language that rates calls based on NPA-NXX assignments.

Cox's initial brief showed why Verizon's "virtual foreign exchange" (or "virtual FX") theory is wrong and, in fact, is merely an effort to prevent CLECs from serving legitimate

[88] *See* Verizon Exhibit 55.

customers or to force those CLECs to deploy unnecessary, expensive facilities to do so. Verizon's initial brief does nothing to refute that showing. Instead, Verizon makes a series of arguments that appear to be intended to confuse, rather than address, this issue.

First, Verizon argues that CLEC service is inconsistent with *Verizon's* Virginia long distance tariff.[89] This argument demonstrates why Verizon's contract language is entirely unrealistic. In particular, while Verizon claims that its tariff bases charges on the actual distance of the call, in every case the tariff actually uses rating points based on NXX code assignments.[90] The use of rating points means that, except for rare instances, such as when the calling and called party are located on top of their respective rating points, the calling party is charged based on a hypothetical distance calculation.[91] Further, because the assigned locations of NXX codes are used to determine rating points, Verizon's claim that a call from a Staunton customer to a CLEC switch physically located in Roanoke "is an interexchange call" under the tariff is incorrect – the tariff does not apply to calls to locally-assigned NXX codes. Ironically, under Verizon's "end-to-end" theory, Verizon would be engaged in impermissible provision of interLATA service whenever a caller makes a call to an ISP and obtains access to a web site located in a distant state. This impossible consequence of Verizon's theory demonstrates that it cannot be correct.

Verizon's other arguments also do not support its theory. In particular, Verizon's efforts to distinguish its traditional FX service from so-called "virtual FX" are fruitless. In essence, Verizon's argument is that its FX service has a "toll" component because the Verizon FX customer purchases a dedicated line between its location and the serving end office where the

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[89] Verizon Brief at IC-15-16. Verizon does not explain why its tariff is relevant.
[90] Verizon Virginia Long Distance Services Tariff, S.C.C.-Va.-No. 209 (effective Oct. 20, 2000), § 4(B).
[91] In fact, if the calling party and called party are located at the fringes of the areas represented by the rating points, it is possible that the actual distance traversed by a call will fall outside the rate band under which the call is charged.

NXX is assigned and that "virtual FX" is a "scheme" because it does not necessarily include that specific component between a CLEC and its FX customer.

This argument has nothing to do with the merits of this issue. As described in the testimony and Cox's brief, Verizon's costs are identical (and very small) whether or not Cox charges its customer for a dedicated facility to carry calls to that customer.[92] In fact, Verizon freely admits that it would not object to paying reciprocal compensation on so-called virtual FX traffic if Cox were to turn that traffic into "traditional" FX by transporting it from Cox's switch to the calling party's local calling area and then back to Cox's switch again.[93] Thus, the only effect of Verizon's proposal would be to impose unnecessary costs on Cox and its customers.

Further, Verizon acknowledges that the only "toll" component of its traditional FX service is the charge to its FX customer for the link between the customer premises and the distant Verizon switch.[94] Despite its claim that FX is a toll service, Verizon treats calls to and from FX customer and within the local calling area of the assigned telephone number as local calls for all purposes, including reciprocal compensation.[95] Verizon makes no effort to recover toll charges on these calls from calling customers, and certainly does not split access revenues for traditional FX calls with Cox or other CLECs. In other words, the only thing from the customer point of view that distinguishes "virtual FX" from traditional FX is that Verizon's FX customer pays for a dedicated line that a CLEC customer might not be required to purchase.

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[92] Cox Brief at 37-38; Tr. at 1238 (D'Amico) (Verizon does not experience significant costs for transporting Cox traffic); 1895-96 (Steven J. Pitterle) (Verizon would use same facilities regardless of whether call is classified as toll or local).

[93] Verizon Exhibit 5, Direct Testimony of Steven J. Pitterle and Pete D'Amico at 6-7 ("Pitterle/D'Amico Direct"); Tr. at 1825-26 (Pitterle). *See also* Cox Brief at 36.

[94] Verizon Brief at IC-17-18; Tr. at 1829, 1889-90 (Pitterle).

[95] Tr. at 1898-1900 (Schell).

This distinction is entirely irrelevant to the question of how specific calls to that customer should be rated for purposes of compensation between carriers.

Even if there were a theoretical case for Verizon's proposed requirement that calls be rated based on the "actual origination and termination points," there are no "viable methods" to implement that proposal.[96] First, it is important to realize that, contrary to the suggestion in Verizon's brief, the contractual language it proposes is not limited to "virtual FX" traffic, but rather covers all traffic under the agreement. This means that the parties would have to make a specific determination of the end points of every call, or at a minimum would have to agree on a way to make an accurate approximation. However, Verizon's own witness admitted that there was no way – let alone a reliable way – to determine whether traffic was local or toll under Verizon's proposed language.[97]

Nevertheless, Verizon claims in its initial brief that it "has proposed a method" for determining whether calls are local or toll.[98] This claim is demonstrably false. The Verizon brief says its proposal would "require[] the Parties to conduct a traffic study or create a factor to identify what percentage of apparent local traffic is VFX traffic."[99] There is, however, nothing that addresses this point in Verizon's prefiled testimony, either direct or rebuttal, or in any of Verizon's contract language filings, even the November JDPL and the Verizon Proposed Agreement.[100] This was confirmed during cross examination at the hearing, when Verizon's

[96] Verizon Brief at IC-18-19.
[97] Tr. at 1813 (Pitterle). The examples used during cross examination are particularly relevant as telecommuting and remote access to the work place become more common. It would not be unreasonable to expect significant growth, in particular, in traffic that is routed to corporate local area networks from home computers.
[98] Verizon Brief at IC-19.
[99] *Id.*
[100] Pitterle/D'Amico Direct at 6-13 (discussion of Issue I-6); Pitterle Rebuttal at 9-17 (discussion of Issue I-6); November JDPL, Intercarrier Compensation at 22-23 (Verizon contract language for Issue I-6); Verizon Proposed Agreement at 24 (Section 5.7.1). Verizon also offered to provide a late-filed exhibit on how its language could be implemented, and failed to do so. Tr. at 1886-87 (Pitterle).

witness was asked to "identify any language in the proposed contract that would . . . explain how a party would determine the originating and terminating points of an individual call, or of calls in general" and could not do so.[101] Even Verizon's initial brief concedes that its "end office relies on the NPA-NXX assigned to calling and called parties to rate [each] call[.]"[102] Indeed, given the admitted inability of the parties' switches to discern the actual originating and terminating points of a call, it is likely that, had such a provision been included in the Verizon Proposed Agreement, the parties could not design a traffic study performed by these switches that would accumulate the information necessary for creating such a factor.

The only time any Verizon witness discussed how carriers would make the determinations required by Verizon's proposal for Issue I-6, the discussion involved an elaborate and highly uncertain process of analyzing the nature of the traffic routed to an individual customer.[103] At a minimum, this largely undefined process would lead to disagreements between Verizon and the affected CLEC and, in any event, would require the CLEC to reveal sensitive business information that it otherwise would keep secret.[104] More significantly, the witness's statement that he was "vaguely aware" of possible mechanisms, but that there is "nothing specific," hardly constitutes a proposal sufficient to be memorialized in contract language.[105]

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[101] Tr. at 1812 (Pitterle).
[102] Verizon Brief at IC-16.
[103] Tr. at 1813-14 (Pitterle).
[104] For instance, it would appear that Verizon's analysis would reveal, at most, that the customer is an Internet service provider or some other type of customer with significant inbound traffic and long hold times. *Id.* This analysis, by itself, would not also lead to the conclusion that the traffic being delivered is "virtual FX" traffic because it would say nothing about where the CLEC delivered the calls. Further, to the extent that Verizon is arguing that ISP-bound traffic should be subject to compensation outside the bounds of the *ISP-Bound Traffic Order,* then its proposal is contrary to current law.
[105] In this regard, Verizon's statement that it has proposed bill-and-keep compensation for "virtual FX" traffic is unsupported by anything in the record, including either of the transcript pages it cites. Verizon Brief at IC-19 (citing Tr. at 1813, 1892 (Pitterle)). Even the reference to "meet points" on page 1892 of the transcript does not describe how either carrier would be compensated for terminating or originating calls, only how they would apportion transport. Tr. at 1892 (Pitterle).

Even if the ill-defined Verizon discussion during cross examination could be transformed into contract language, it would raise more questions than it would answer, and requiring the parties to agree on how to conduct traffic studies and, more importantly, what the results would mean, would be certain to lead only to endless disputes. Simply put, Verizon's proposal is a recipe for disaster.

Finally, the state cases cited by Verizon demonstrate that it has remedies other than its unworkable interconnection agreement language.[106] The states are better positioned to determine whether a CLEC is abusing NXX code assignments, and there is no evidence that states have been unwilling to act when they believe abuses are occurring.[107] Of course, for the reasons described in Cox's initial brief and above, the Commission is not bound in any way by the determinations made in other states, but should instead analyze this issue on the merits of the case before it.[108]

In sum, Verizon has failed to make either a theoretical or practical case for its proposed language. The Commission should reject Verizon's proposal and retain the industry standard language proposed by Cox.

[106] Verizon Brief at IC-19-21.

[107] Cox notes that Verizon quotes at length from a supposed decision of the Connecticut Department of Public Utility Control (the "CDPUC"). The document Verizon quotes is a draft decision that has not been made final by the CDPUC, and therefore does not constitute authority of any kind. In fact, the CDPUC reopened that proceeding to seek further comment. DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Services Facilities, *Notice of Reopening of Evidentiary Record and Request for Written Comments*, Docket No. 01-01-29 (Conn. D.P.U.C. May 5, 2001). The Commission should disregard Verizon's citation to this non-binding draft order.

[108] Cox Brief at 4; *see supra* Section II(A)(1) (discussion of *MCI Telecommunications*).

IV. Business Process: Verizon Should Not Be Permitted to Monitor Cox's Use of CPNI. [Issue I-8]

Verizon maintains that it should be granted contractual authority to monitor Cox's access to and use of CPNI through Verizon's OSS.[109] Having abandoned the arguments it has made earlier in this proceeding, Verizon now argues exclusively that it must be allowed to monitor Cox's CPNI use so that it can maintain the integrity of its OSS for use by other carriers.[110] Verizon's argument is misplaced, however, because Verizon does not need to monitor CPNI to determine levels of OSS usage.[111] Indeed, the contract language to which Cox objects does not address OSS monitoring generally, but it specifically gives Verizon the right to monitor Cox's "access to and use" of CPNI obtained through Verizon's OSS.[112]

Verizon's effort to link Issues I-8 and I-11 may be intended to obscure the differences between these issues. As noted above, however, monitoring the volume of OSS usage does not require Verizon to monitor Cox's access to or use of CPNI. Further, volume monitoring alone would not allow Verizon to "protect" the CPNI of its customers. Consequently, there is no connection between these issues and the Commission should not consider Verizon's OSS protection rationale when it evaluates this proposal.

Indeed, nothing in Verizon's initial brief affects the basic reasons why the Commission should reject Verizon's proposal. First, and as Cox noted in its initial brief, Verizon already is

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[109] Verizon Brief at BP 4-6.

[110] *Id.* Previously, Verizon had made arguments based on its Section 222 responsibility to safeguard customer CPNI and liability concerns stemming from that duty. Answer at 201. The only remaining vestige of that argument is a statement in the brief that Verizon has an obligation to users of its OSS to protect CPNI. Verizon Brief at BP-4. This is incorrect, because a carrier's obligations under section 222 apply to its subscribers, not to other carriers. 47 U.S.C. § 222(a). In any event, there is nothing in the record to suggest that Cox or any other CLEC could obtain access to another carrier's records via Verizon's OSS.

[111] Tr. at 2572-73, 2582-83 (Mary Ellen Langstine) (Verizon currently monitors OSS usage); 2584-85 (Langstine) (Verizon could continue to monitor OSS even in the absence of CPNI monitoring).

[112] November JDPL, Business Process at 3-4 (Verizon proposed language section 18.4.4.).

well protected against any Cox abuse of CPNI, and usage monitoring will not increase that protection.[113] Further, subjecting Cox to CPNI monitoring will create significant competitive risks, and nothing in Verizon's Brief either addresses or mitigates those concerns.[114] Verizon's repeated assertions that it monitors only the volume of Cox OSS use cannot obscure that its proposed language gives Verizon an unfettered right to monitor Cox CPNI usage in any way it sees fit.[115] Moreover, at the hearing Verizon's witness resisted placing any limits on the breadth of the permitted monitoring.[116] For these and the other reasons outlined in Cox's brief, a CPNI monitoring right would be both inappropriate and dangerous. The Commission should reject Verizon's proposed language.

V. Pricing Terms and Conditions: Cox's Rates for Services Provided Under Tariff Should Not Be Subject to Caps Under the Agreement. [Issue I-9]

Verizon bases its price cap proposal on its right to pay only just and reasonable rates for transport over Cox facilities.[117] Of course, Cox does not claim a right to charge Verizon unjust or unreasonable rates.[118] The actual point of dispute for Issue I-9 is whether Verizon rates will be the standard by which Cox's rates will be judged, or whether Cox can base its rates on its costs, as Verizon does.[119] Verizon's brief and the record in this proceeding demonstrate that Verizon has failed to produce any justification for using its rates as the measuring stick. Therefore its proposal must be rejected.

[113] Cox Brief at 42-43.
[114] Cox brief at 43-44.
[115] Verizon Brief at BP-5 (Verizon currently monitors only volume of web GUI use) (citing Tr. at 2568 (Langstine)); Tr. at 2546-47 (Langstine) (Verizon is not monitoring OSS for content at this time).
[116] Tr. at 2549-50 (Langstine).
[117] Verizon Brief at PTC-5.
[118] *Id.*
[119] Cox Brief at 44.

Verizon contends that there are no effective market mechanisms to ensure that Cox rates will remain reasonable.[120] Cox has shown that this is false. First, Verizon's costs are controlled by Verizon's choices: as Verizon concedes, it has the alternative of electing to negotiate a mid-span fiber meet.[121]

Cox's rates also are controlled by the competitive market for transport services in Virginia, which puts further downward pressure on Cox's transport rates.[122] If Cox wishes to market these services effectively, its rates must be priced as near to cost as possible.[123] Moreover, as a common carrier, Cox is required to provide its services to Verizon on the same terms and conditions that it offers to other carriers.[124] Therefore, Verizon benefits from the effect that competition has on Cox's rates.

Even if the market failed to keep Cox's rates just and reasonable, Verizon would still have remedies available under Virginia law. Verizon concedes that Virginia law requires CLECs to charge just and reasonable rates.[125] The record further shows that Verizon can invoke the powers of the Virginia Commission to challenge Cox rates it believes are unreasonable.[126] This regulatory regime adequately protects Verizon from unreasonable Cox rates. In short, given the market and regulatory mechanisms in place, a contractual rate cap would be superfluous.

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[120] Verizon Brief at PTC 3-4.
[121] Verizon Brief at PTC-4.
[122] Cox Brief at 45.
[123] This fact makes Verizon's citations to the Commission's recent *CLEC Access Reform Order* inapposite, because there is a competitive market for the services Verizon would purchase from Cox, whereas there is no such market for access services. Reform of Access Charge Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923 (2001).
[124] 20 Va. Code § 5-400-180(C)(1)(h).
[125] While Verizon argues that this is a reason to include contract language regarding Cox's rates, the opposite is true. Given an existing legal requirement that Verizon can use to attack Cox's rates if those rates are unreasonable, there is no need for specific contract language. Moreover, agreed-to language in the contract already commits Cox to following applicable state and federal law. Cox Petition, Exhibit 2 at 86 (§ 27.1).
[126] Cox Exhibit 24. Contrary to Verizon's claims, however, Virginia state law does not cap CLEC retail rates at Verizon's level. Cox Brief at 46-47 (explaining Virginia CLEC rate regulation, and citing, *inter alia*, VAC5-400-180.D.3.c, d of the Virginia Administrative Code).

Moreover, the record shows that market and regulatory forces in Virginia are working to control Cox rates. Verizon has conceded that Cox is not charging it any rates that it deems unreasonable. Consequently there is no factual basis for adopting Verizon's proposal.[127]

Finally, given the lack of factual and legal support, Verizon's proposal is surprisingly broad, going much further than necessary to accomplish even its supposed goal of ensuring that Cox offer "just and reasonable" rates. Verizon's September JDPL submission flatly bars Cox from charging rates higher than Verizon's, regardless of Cox's costs.[128] Verizon's November JDPL appears to soften this stance by giving Cox a regulatory avenue to charge rates based on Cox's actual costs, but this alternative is a mirage, requiring Cox to obtain affirmative approval of its rates despite the lack of a federal or state mechanism allowing it to do so, and even then requiring Verizon to pay the new rates *only if specifically ordered to do so*.[129] In the end, Verizon's proposals are complex and unwieldy solutions to a problem that Verizon admits does not exist. As such, they should be rejected.

VI. General Terms and Conditions: Verizon Should Not Be Permitted to Terminate Cox's Access to OSS. [Issue I-11]

Verizon discusses its request for the contractual right to terminate Cox OSS access along with its request for the right to monitor Cox's use of CPNI, but as discussed above these issues are distinct and Verizon's combination of the two appears to be intended to obscure the distinctions.[130] Indeed, most of Verizon's arguments in support of its proposal seek to justify Verizon's practice of monitoring the volume of CLEC OSS use, a practice to which Cox does

[127] Cox Exhibit 22.
[128] September JDPL, Pricing Terms and Conditions at 2-3.
[129] November JDPL, Pricing Terms and Conditions at 1-2; *see also* Cox Brief at 47-48.
[130] Both Verizon's hearing testimony and its Initial Brief show that Verizon considers Issues I-8 and I-11 to be inextricably linked. Tr. at 2556-57; Verizon Brief at BP-1, 3. As defined in this proceeding, however, I-8 and I-11 are distinct issues that should be dealt with separately.

not object.[131] Cox's objection to Verizon's proposal for Issue I-11 is specifically to Verizon's gaining a unilateral termination right for perceived OSS abuses. The competitive injury that improper OSS termination would cause, coupled with the limited history of abuse that Verizon has identified, outweighs the problems that Verizon claims CLEC OSS abuse could cause. The Commission should reject Verizon's attempt to obtain this powerful new competitive lever.

Despite Verizon's rhetoric about "protect[ing] the integrity of its OSS" for all CLECs, there is no evidence of any risk that cannot be addressed by existing language and practices.[132] There have been very few incidents, all minor, and all of which were addressed successfully.[133] Although Verizon now claims that OSS could be shut down by abuses, that allegation is not substantiated in the record.[134] Moreover, Verizon's witness conceded that no incident ever has arisen that would have been serious enough to induce Verizon to invoke the proposed termination provision.[135] Verizon therefore proposes a remedy for a nonexistent harm.

In addition, Verizon has provided no explanation for why its current contractual remedies and the agreed-to remedies in the proposed contract are insufficient to protect its OSS.[136] Verizon already has the right to suspend individual Web GUI access to address the minor problems it has identified or any other problems that might occur.[137] In addition, although

[131] Verizon Brief at BP 4-6; Cox Brief at 43; Tr. at 2584-85 (Langstine).
[132] Cox Brief at 48-50.
[133] Cox Exhibit 26; Tr. at 2576, 2586 (Langstine).
[134] Verizon Brief at BP-5. Although at one point in the proceeding Verizon attorney Oates asked WorldCom witness Lichtenberg whether she had any basis to contradict Verizon testimony that overuse of the Web GUI could shut down the system, Verizon did not, in fact, offer any such testimony. Tr. at 2020-21 (Oates, Lichtenberg). Therefore, Ms. Lichtenberg's answer is irrelevant.
[135] Tr. at 2586 (Langstine). Verizon cites this passage for the proposition that all problems have been corrected within ten days, but the witness did not discuss the timing of the CLEC actions.
[136] See Cox November 14 Agreement, § 9.3.1 ("[I]f Party A reasonably determines that the characteristics, facility or service or methods of operation used by Party B will or are likely to interfere with or impair Party A's provision of services, Party A may interrupt or temporarily suspend any service or facilities provided to Party B that gives rise to or is likely to give rise to the interference or impairment, provided however, that the degree of interruption or suspension must be proportionate to the harm to be avoided...."); Verizon Proposed Agreement, § 9.3.1 (same).
[137] Tr. at 2530 (Langstine).

Verizon attacks the petitioners' assertion that its audit rights give it a remedy for combating OSS abuse, Cox's argument against Verizon's OSS termination provision does not rest on the existence of OSS audits.[138] Moreover, Verizon concedes that its general termination power for material breaches of the interconnection contract would be triggered by extreme instances of OSS abuse.[139] Clearly these remedies are sufficient to address the existing and potential problems that Verizon has identified.

Finally, Verizon's attempt to base its supposed need for the termination right on its statutory obligations to protect its OSS for the use of other carriers also fails.[140] Verizon alleges that, because of this duty, Cox's desire to be free of Verizon's termination provision translates into a request for OSS access on terms superior to those provided to other carriers.[141] This argument is not credible. Cox wishes only to have access to Verizon's OSS in accordance with the law; it does not request any form of preferential treatment. Even if Verizon has managed to extract OSS termination clauses from other carriers in negotiated interconnection agreements, those agreements are irrelevant to the Commission's determination of this issue. As noted above, voluntary agreements are not required to comply with otherwise applicable statutory and regulatory requirements.[142] For that reason, voluntary agreements cannot be used as a benchmark against which arbitrated agreements can be judged.

Therefore, Verizon has failed utterly to justify its proposal for a broad and unwise OSS termination power. That proposal should be rejected.

[138] Verizon Brief at BP-6.
[139] Tr. at 2534 (Langstine).
[140] Verizon Brief at BP-4-6.
[141] Verizon Brief at BP-1, 5-6.
[142] 47 U.S.C. § 252(a); *See supra* Section II(A)(1).

VII. Conclusion

For all these reasons, Cox Virginia Telcom, Inc., respectfully requests that the Commission grant its Petition for Arbitration and order that the interconnection agreement between Cox and Verizon incorporate the proposed Cox provisions contained in the November JDPL and the contract filed by Cox on November 14, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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